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Letter dated 14 August 2002 from the Charge d'affaires a.i. of the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council

I enclose a note circulated by the Prosecutor of the International Criminal Tribunal for Rwanda at a meeting of the Security Council of 23 July 2002 under the Presidency of Sir Jeremy Greenstock. I would be grateful if this could be circulated as a document of the Security Council.

(*Signed*) Stewart **Eldon**
Chargé d'affaires a.i.

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Annex to the letter dated 14 August 2002 from the Chargé d'affaires a.i. of the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council

Report of the Prosecutor of the International Criminal Tribunal for Rwanda

1. The Prosecutor wishes to inform the Security Council on the current state of investigations and prosecutions before the International Criminal Tribunal for Rwanda.

2. The Tribunal is currently facing a crisis, as its judicial work is being impaired by the lack of availability of witnesses. This, in turn, arises from difficulties in obtaining the full cooperation of the Rwandan authorities.

3. In January 2002, two Rwandan associations of victims of the 1994 genocide (Ibuka and Avega) announced their intention to discontinue their cooperation with the Tribunal and called upon their members not to appear as witnesses in Arusha. The association complain, first, that the Tribunal employs suspects of the genocide as defence investigators and, second, that witnesses are not sufficiently protected. A serious situation has consequently arisen, since several ongoing trials, the Kajelijeli, Niyitegeka and Hutare trials, have been considerably delayed by the absence of essential prosecution witnesses. A determined attempt by the Tribunal's Registrar to create a joint commission to investigate the complaints of the associations proved to be unsuccessful. Other efforts were made by the Registrar and the Prosecutor to address the complaints, and to improve the protection of witnesses were the complaints to be found valid.

4. The assistance of the Rwandan Government has been sought to resolve the difficulties. In the Niyitegeka case, the Trial Chamber, presided over by the President of the Tribunal, Judge Navanethem Pillay herself, was "compelled to adjourn the proceedings". The Chamber's decision of 19 June 2002 draws "the attention of the Rwandan authorities to these legal obligations to cooperate with the Tribunal" and requests "the Rwandan authorities to ensure that the travel of the witnesses scheduled for the cases is facilitated".

5. The Rwandan Government maintains that the associations are independent, and that they cannot be compelled to cooperate with the Tribunal. It is clear however that the letter addressed by the Presidents of these associations to the Registrar of the Tribunal on 6 March 2002, announcing that their cooperation would remain suspended as long as their concerns are not addressed, was sent through the Minister of Foreign Affairs of the Rwandan Government, and was indeed signed by the Secretary-General of the Ministry of Foreign Affairs. It appears that the Rwandan Government has the ability to resolve the crisis, and indeed that the lack of cooperation may in fact stem from the attitude of the Rwandan authorities themselves. This is evidenced by the recent changes in the official procedures for issuing travel authorizations and travel documents for witnesses, making it much harder for witnesses to leave Rwanda to testify before the International Tribunal in Arusha.

6. The Prosecutor is deeply concerned by the withdrawal of cooperation by the Rwandan authorities. Their position has manifested itself in different forms in recent months, and has hardened in the last weeks. In one particular case, the authorities have not provided official information pertaining to false travel documents required to refute an alibi defence. No answers have been given to repeated requests to obtain authorizations by the Government of Rwanda to temporarily transfer a number of detained witnesses, whose testimonies are crucial to the prosecution of ongoing cases.

7. Although it has been publicly stated that the reason for the suspension of cooperation is the way witnesses are treated, the Prosecutor was reliably informed that the true reason is to be found elsewhere. Powerful elements within Rwanda strongly oppose the investigation by the Prosecutor, in the execution of the Tribunal mandate, of crimes allegedly committed by members of the Rwandan Patriotic Army in 1994. Despite assurances given by President Kagame to the Prosecutor in the past, no concrete assistance has been provided in response to repeated requests regarding these investigations. Currently, there is no genuine political will on the part of the Rwandan authorities to provide assistance in an area of work that they interpret to be political in nature, when, obviously, the Prosecutor limits herself to the technical implementation of her judicial mandate.

8. In these circumstances, the Prosecutor is effectively unable, at this stage, to achieve the investigation of crimes alleged to have been committed by the Rwandan Patriotic Army in 1994.

9. Still, it remains uncertain whether ongoing trials will resume as scheduled in the coming weeks with the necessary witnesses.

10. Conduct of this nature strikes at the very core of the International Tribunal's ability to complete its mandate. The Prosecutor therefore considers it necessary to bring the matter to the attention of the Security Council.